IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.94 OF 2006

M/s.Kalpataru Power Transmission Ltd. .. Petitioner

V/s

Union of India & Ors. .. Respondents

Shri.V.Shridharan with Shri Prakash Shah i/b. PDS Legal for the Petitioner.

Shri.A.S. Rao with Shri.Y.R.Mishra for the Respondents.

CORAM : DR.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.

DATE : 7TH FEBRUARY, 2006.

P.C.:

1. Rule. Rule is made returnable forthwith. Heard the learned Counsel for the Petitioner and the learned Counsel for Respondents. The learned Counsel for Respondents waives service. By consent the matter is taken up for final hearing. Inspite of several opportunities being given, the Respondents have not filed any affidavit-in-reply in the above matter.

2. By this petition, the Petitioner is challenging the order dated 27th September, 2005 passed by the learned CESTAT. The main grievance of the Petitioner is that the CESTAT had ordered the

payment of interest on late payment of duty with effect from 11th May, 2001. The learned Counsel for the Petitioner points out that the Petitioners were under a genuine belief that at the time of clearance of the goods, World Bank would finance the project, and in fact later World Bank did finance the project in the year 2004. It appears that these facts were also known to the Department. All the above facts were not considered by the CESTAT in the impugned order. Similarly, even the issue of bar by limitation under section 11A of Central Excise Act, 1944 has not been considered properly.

3. Having regard to the aforesaid facts and circumstances of the case we inclined to quash and setaside the order dated 27th September, 2005 of the learned CESTAT, and remanding the matter to CESTAT to consider all the issues afresh strictly on its merit in accordance with law.

4. Rule is made absolute in terms of the above.

(DR.S.RADHAKRISHNAN,J.)

(J.P.DEVADHAR,J.)